

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House  
(317)232-9855

**ADMINISTRATIVE RULE  
FISCAL IMPACT STATEMENT**

**PROPOSED RULE:** 04-292

**STATE AGENCY:** Department of State Revenue

**DATE PREPARED:** Apr 11, 2005

**DATE RECEIVED:** Feb 25, 2005

**FISCAL ANALYST:** Jim Landers

**PHONE NUMBER:** 317-232-9869

**Digest of Proposed Rule:** Adds 45IAC 20 concerning the conduct of charity gaming activities by qualified organizations licensed by the Department of State Revenue. Repeals 45 IAC 18. Effective 30 days after filing with the Secretary of State.

**Governmental Entities:** It is estimated that the *use of proceeds* requirements proposed in 45 IAC 20-3-6 could potentially result in the suspension or revocation of 165 charity gaming licenses held most recently in FY 2004. The suspension or revocation of these licenses could potentially reduce revenue from charity gaming license fees by \$273,000 to \$963,500, depending upon the extent that patrons of these licensees shift their gaming expenditures to other charitable gaming licensees.

*Background:* The Charity Gaming License Fee is based on the total gross receipts earned from charity gaming by a licensed organization. The initial license fee is \$25. The subsequent license fee can range from \$25 for organizations with less than \$15,000 in charity gaming gross receipts to \$25,000 for organizations with at least \$3.0 M in charity gaming gross receipts.

It is estimated that 165 organizations holding charity gaming licenses in FY 2004 (approximately 8% of the total licensed) would have had insufficient profit margins to meet the proposed use of proceeds requirements. (See *Regulated Entities* for more detailed information on the use of proceeds requirements and current charity gaming licensees.) The FY 2004 charity gaming gross receipts generated by these 165 licensees totaled about \$128.1 M in FY 2004. The renewal license fees based on the charity gaming gross receipts of these 165 organizations totals about \$963,500. The suspension or revocation of the licenses of these organizations would result in the loss of this license fee revenue, assuming: (1) that FY 2004 gross receipts and expenses are indicative of future annual performance of these licensees; and (2) that patrons of these licensees don't shift their charity gaming expenditures to other charity gaming licensees. If, however, patrons of the suspended or revoked licensees shift all of their charity gaming expenditures to other licensees, the net revenue loss could potentially decline to about \$273,000.

**Regulated Entities:** *Summary:* It is estimated that the *use of proceeds* requirements proposed in 45 IAC 20-3-6 could potentially result in the suspension or revocation of 165 charity gaming licenses held most recently in FY 2004 (approximately 8% of the total licensed). These licensees generated profit margins in FY 2004 that would have been insufficient to meet the proposed use of proceeds requirements. Conversely, a total of 2,063 licensees in FY 2004 would have had profit margins sufficient to meet the proposed requirements. Of the 165 licensees that would not have met the use of proceeds requirements, 126 reported positive net

proceeds from charity gaming. Due to the use of proceeds requirements, these licensees would have experienced a loss of approximately \$7.36 M annually. This assumes that the FY 2004 gross receipts and expenses of these 126 licensees is indicative of the future annual performance of these licensees. The total loss equals the net proceeds from charity gaming activities that was either retained for the charitable purposes of these 126 licensees or contributed to other charitable organizations. This outcome, however, may result in a net gain of approximately \$7.36 M to the 2,063 licensees that generated profit margins in FY 2004 that would have been sufficient to meet the proposed use of proceeds requirements. This assumes that patrons of suspended or revoked licensees would shift their charity gaming expenditures (approximately \$128.1 M in FY 2004) to the other licensees. Given the higher profit margins of the remaining licensees, the \$128.1 M in expenditures could potentially translate into more than \$7.36 M in net proceeds.

*Background:* The rule requires charity gaming organizations to use a specified minimum percentage of their annual charitable gaming gross receipts for: (1) the charitable, community, or educational purposes of the organization; or (2) the acquisition, construction, maintenance, or repair of real property involved in the operation of the organization and used for the charitable, community, or educational purposes of the organization. The minimum use of proceeds requirements are specified in the table below.

<b>Annual Charity Gaming Gross Receipts</b>	<b>Percent to be Used for Charitable, Community, or Educational Purposes of the Organization</b>
Less than \$150,000	5%
\$150,000 to \$500,000	8%
More than \$500,000	10%

The rule provides for the suspension or revocation of a charity gaming license in the event an organization doesn't comply with the use of proceeds requirements. The rule also provides for an exception to the use of proceeds requirement if an organization is within less than one percentage point of the use of proceeds requirement. In such a case, the organization may obtain a charity gaming license for the following year, but must pay the shortage from its net proceeds in the following year. Failure to do so results in a one-year license suspension. The rule also specifies that use of proceeds by an organization must be made by a check written from its charitable gaming account. The rule also specifies permitted uses of charitable gaming net proceeds and prohibits certain uses of charitable gaming net proceeds.

According to preliminary financial data, there were 2,253 charity gaming license holders in FY 2004. Twenty-five licensees reported no gross receipts and are excluded from the analysis. Based on reported profit margins, 2,063 of the licensees would be able to meet the applicable use of proceeds requirement. The average profit margin of these licensees was 16.7%. The licensees reported gross receipts totaling approximately \$410.7 M and about \$68.5 M in net proceeds available for the charitable purposes of these organizations. Assuming none of these licensees obtained an initial charity gaming license, license fees were calculated to total approximately \$2.85 M. In contrast, 165 licensees reported profit margins that would be insufficient to meet the applicable use of proceeds requirement. The average profit margin of this group was 5.7%. These licensees reported approximately \$128.1 M in gross receipts. Also, 126 of these licensees reported positive net proceeds from charity gaming, totaling about \$7.36 M. License fees for this group was calculated at \$963,475. Financial information on the two groups of licensees is outlined in the table below.

Charity Gaming Licensees with <b>Insufficient</b> Profit to Comply with "Use of Proceeds" Requirements*				
Annual Gross Receipts	Number of Licensees	% Share	Gross Receipts	Profit
Less than \$150,000	56	33.94%	\$1,000,809	-3.81%
\$150,000 to \$500,000	32	19.39%	\$9,866,002	4.59%
More than \$500,000	77	46.67%	\$117,220,936	5.88%
Total	165		\$128,087,748	5.70%

Charity Gaming Licensees with <b>Sufficient</b> Profit to Comply with "Use of Proceeds" Requirements*				
Annual Gross Receipts	Number of Licensees	% Share	Gross Receipts	Profit
Less than \$150,000	1641	79.54%	\$42,219,690	36.11%
\$150,000 to \$500,000	235	11.39%	\$69,374,913	16.57%
More than \$500,000	187	9.06%	\$299,142,255	13.95%
Total	2063		\$410,736,858	16.67%

\*Based on FY 2004 financial information. Excludes 25 licensees reporting no gross receipts.

*Other rules:* The rule includes other provisions that could potentially have some impact on charity gaming organizations, or manufacturers and distributors of charitable gaming cards. The impact of these requirements is indeterminable. The rule does the following:

- (1) Narrows the definition of an organization "member" for purposes of delineating individuals who may work at an organization's charity gaming events.
- (2) Specifies those persons who may operate charity gaming activities for an organization.
- (3) Specifies requirements for DOR access to organization records, including membership information, financial records, and receipts for purchases of charity gaming supplies and cards.
- (4) Establishes reporting requirements for manufacturers and distributors of charity gaming supplies and cards.
- (5) Establishes a process for the DOR to notify a licensee that it will assess additional listed taxes on the licensee, and establishes a process for protesting DOR findings of charity gaming violations.

**Information Sources:** *Charity Gaming Annual Report*, Department of State Revenue, FY 2002-2004.